

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

FRACTUS, S.A.,

Plaintiff,

v.

SAMSUNG ELECTRONICS CO., LTD.; *et al*

Defendants.

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Civil Action No. 6:09-cv-00203

Civil Action No. 6:12-cv-00421

JURY TRIAL DEMANDED

NOTICE REGARDING PROPOSED ORDERS

Fractus files this Notice to point out the similarities and differences between the Proposed Orders submitted by Fractus and the Proposed Order submitted by Samsung. As a threshold matter, both parties agree that the judgment in 6:09-cv-00203 should be amended to place the royalty rate with the original case instead of the severed action. Such an action would help blunt any argument from Samsung to the Federal Circuit that the judgment in the original case is still not final because if not amended, Samsung may (erroneously and frivolously) argue that the judgment in the original case is still not final because the royalty was only entered in the severed case. As discussed at the hearing, although erroneous, such a motion—even if incorrect—would further delay the Federal Circuit appeal.

On the differences, the parties have three main points of disagreement. *First*, the Fractus Proposed Order makes the royalty rate applicable to sales of adjudicated phones and sales of “phones not colorably different from the adjudicated phones.” The Samsung Proposed Order does not contain that language. The effect of adopting Samsung’s Order could be to deny Fractus its right to later bring any “not colorably different” proceeding after the appeals in the case are

completed. As discussed extensively in the briefing and as Samsung conceded, an ongoing royalty applies to “not colorably different” phones and the Order should so specify.

Second, and relatedly, the Samsung Order mandates that if Fractus wants relief on non-adjudicated phones, it must do so “in a new infringement action.” This is not the law, as Fractus retains the right to later bring a proceeding to this Court for any phones “not colorably different” from the adjudicated phones.

Third, Samsung’s Order apparently (although not explicitly) also attempts to give a final judgment in the new action (6:12-cv-00421) while Fractus’s order keeps the new action alive so that Fractus may bring an amended complaint for non-adjudicated phones. Such an action allows Fractus the benefit of an early case number. Fractus suggests that the Court allow Fractus to file an amended complaint within a set amount of time, and then stay the case until after the Federal Circuit decides the appeal, at which point the stay would be automatically lifted and the Court could set a status conference within 60 days of the Federal Circuit opinion to set a schedule for the service of infringement contentions, the new discovery that would occur focused on the new phones, and a new trial date.

DATED: February 15, 2013

Respectfully submitted,

By: /s/ Justin A. Nelson

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CERTIFICATE OF SERVICE

I hereby certify that all counsel of record, who are deemed to have consented to electronic service are being served this 15th day of February, 2013 with a copy of this document via the Court's CM/ECF system per Local Rule CD-5(a)(3).

/s/ Justin A. Nelson

Justin A. Nelson